

## **CHAPTER 22 — UNIFORMED SERVICES SUBJECT TO RETIREMENT CREDIT**

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### **2200 Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)**

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides retirement credit to uniformed service employees. USERRA was signed into law in 1994; however, it applies to retirement rights for uniformed service employees retroactive to 1940. The US Federal Department of Labor considers USERRA a restatement and clarification of the veterans' reemployment rights laws enacted in 1940 which provided reemployment without loss of seniority.

NOTE: Refer to Subchapter 2001 for other Military Service credit.

### **2201 Uniformed Services**

- Armed Forces
- Army and Air National Guard when engaged in active duty for training, inactive duty training or full-time National Guard duty
- Commissioned corps of the Public Health Service
- Any other category of persons designated by the President in time of war or emergency.

### **2202 Examples of Military Service**

- Army
- Army Reserve
- Marine Corps
- Marine Corps Reserve
- Air Force
- Air Force Reserve
- Coast Guard
- Commissioned Officer of US Public Health Service

**2203 Uniformed Service Employees Become Eligible for Retirement Credit for Periods of**

- Active duty
- Active duty for training
- Inactive duty for training which includes weekend drills if part of normal work schedule
- Annual training
- Training for which orders were given
- Volunteer or required active duty military service or training
- Time a person is absent for the purposes of a fitness exam

**2204 Retirement Credit**

The amount of retirement credit cannot exceed what the employee would have received had they remained continuously employed throughout the period of service. Employee contributions to the Wisconsin Retirement System (WRS) are based on what the employee would have earned from their employer had they not been absent from work for service in the uniformed services. The computation is not based on what the employee earned from the uniformed service.

You can work with ETF to report the earnings and hours for USERRA retirement credit. The employer can collect the employee share of the required employee contributions from the employee, but according to Federal law, the employee cannot be required to pay interest charges for late reported employee contributions. This means the employer is responsible for both the employee and the employer share of the interest.

**2205 What the Employee Must Do to Receive Credit**

1. Notify the employer that they are going on military leave.
2. Leave the military under honorable conditions.
3. Return to the same employer within the following time limits, for leaves which are:
  - Less than 31 days, report to work the next regularly scheduled workday after receiving adequate travel and rest.
  - 31 to 180 days, return to work within 14 days after completion of service.
  - More than 180 days, return to work within 90 days after completion of service.
4. Provide the employer with a copy of their military leave and earnings statement (military papers) showing the date of entry and the date of discharge.

NOTE: Employer Bulletin Volume 14, No. 19 dated December 26, 1997 contained a notice titled “Uniformed Services Subject to Retirement Credit.” Employers were encouraged to post the notice for employee informational purposes. This notice was to help employers avoid additional interest on late reported earnings. A copy of the notice appears on the following page.

### **UNIFORMED SERVICES SUBJECT TO RETIREMENT CREDIT**

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides retirement credit to uniformed service employees. These employees became eligible for retirement credit for periods of active duty, active duty for training, inactive duty for training which included weekend drills, annual training, training for which orders were given, and volunteer or required active duty military service or training. Even though USERRA was signed into law in 1994, it applies to retirement rights for uniformed service employees back to 1940. The US Federal Department of Labor considers USERRA a restatement and clarification of the veterans' reemployment rights laws enacted in 1940 which provided reemployment without loss of seniority.

You may be eligible for retirement credit for uniformed services performed since 1940. Uniformed services means the Armed Forces, the Army and Air National Guard when engaged in active duty for training, inactive duty training or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency. Examples of Military Service include: Army, Army Reserve, Marine Corps, Marine Corps Reserve, Air Force, Air Force Reserve, and the Coast Guard.

The amount of retirement credit cannot exceed what you would have received had you remained continuously employed by your employer throughout the period of service. Employee contributions to the Wisconsin Retirement System (WRS) are based on what you would have earned from your employer had you not been absent from work for service in the uniformed services. The computation is not based on what you earned from the uniformed service.

To receive the credit, you must do the following:

1. Notify your employer that you are going on military leave.
2. Leave the military under honorable conditions.
3. Return to the same employer within the following time limits, for leaves which are:
  - Less than 31 days, report to work the next regularly scheduled workday after receiving adequate travel and rest.
  - 31 to 180 days, return to work within 14 days after completion of service.
  - More than 180 days, return to work within 90 days after completion of service.

If you have uniformed services for which you have not been given retirement credit, provide your employer with a copy of your military leave and earnings statement showing the date of entry and the date of discharge. Your employer will work with the Department of Employee Trust Funds to report the earnings and hours for retirement credit. Your employer can collect the employee share of the required employee contributions from you but you cannot be required to pay any interest charges for late reported contributions.

## **2206 Current Year Reporting**

To satisfy the requirements of USERRA for WRS purposes, an employer must submit a copy of the employee's military leave and earnings statement (military papers) to ETF and do one of the following:

1. Keep the employee on a paid leave of absence and continue to report earnings and hours to the WRS. Report the employee's entire annual earnings and hours for the current year using the annual transaction code P000.
2. Pay the employee the difference in earnings from what he or she is receiving as payment for military service. The employer reports the full earnings and hours to WRS, of which a portion consists of deemed earnings and hours for the portion of the payment the employee received from the military. The total amount reported to WRS equals the earnings and hours the employee would have received if the employee had remained employed. Report the employee's entire annual earnings and hours for the current year using the annual transaction code P000.
3. Put the employee on an unpaid leave of absence for the entire time of military duty. Report the deemed earnings and hours to WRS that the employee would have received if the employee had remained employed, and remit contributions on these earnings. Submit an *Employee Transaction Report*, ET-2533 with Action Code P059 to report Deemed Military Service-USERRA. Enter the beginning date of the leave in the Action Date column and enter the end date of the leave in the Last Day Paid column on the *Employee Transaction Report*, ET-2533.

## **2207 Retroactive Reporting**

An employee can receive full retirement credit for uniformed military services performed anytime since 1940. To receive the credit, the employee must provide the employer with a copy of the employee's military leave and earnings statement (military papers), showing the date of entry and the date of discharge.

The employer must submit the military papers to ETF with an *Employee Transaction Report*, ET-2533 showing only the additional earnings and hours of military service for each year. Use Transaction Code P025 to indicate Late Reported Earnings Military-USERRA.

ETF will issue an invoice showing the amount of earnings added to the account for each year and bill the employer for the contributions and any interest due. The amount due will include both the employer and employee share of the contributions plus the corresponding interest. Employers must transmit to ETF the total amount due including the employer and employee interest. Employers can collect from the employee the employee required contribution, or the employer may elect to pay part or all of the employee amounts.

Employees cannot be required to pay interest for their late contributions under USERRA (the employer must pay the employer's and employee's share of interest). Employees will be given up to three times their length of military leave to repay their contribution to the employer. All employee payments to the employer must be made within five years, without interest or penalties assessed to the employee.